

FILED

APR 15 2022

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY af
DEPUTY CLERK

Johnny Fletcher JR #97339-071
Name and Prisoner/Booking Number
United States Penitentiary Atwater
Place of Confinement
P.O. Box 019001
Mailing Address
Atwater, CA 95301
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Johnny Fletcher JR
(Full Name of Plaintiff) Plaintiff,
v.
(1) United states
(Full Name of Defendant)
(2) Warden B.M. Trate
(3) (A.H.SA) K. Silva
(4) (2.5) Staff-member Test-positive
COVID-19 names Defendant(s) Unknown
☐ Check if there are additional Defendants and attach page 1-A listing them

CASE NO. 1:22 CV 000443 GSA PC
(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT
BY A PRISONER

- ☒ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

"Request Jury Trial"

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- ☒ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
☒ Other: 18 U.S.C. § 242 and California Civil Code § 52.1(c)

2. Institution/city where violation occurred: U.S.P. Atwater, P.O. Box 019001, Atwater,
CA 95301

RECEIVED

APR 15 2022

Revised 3/15/2016

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CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

B. DEFENDANTS

1. Name of first Defendant: United States/BOP. The first Defendant is employed as:

(Position and Title) (Institution)
2. Name of second Defendant: Warden B.M. Trate. The second Defendant is employed as:
Warden at USP Atwater
(Position and Title) (Institution)
3. Name of third Defendant: K. Silva. The third Defendant is employed as:
(AHSA) Medical at USP Atwater
(Position and Title) (Institution)
4. Name of fourth Defendant: (25) Staff-members Names UNK. The fourth Defendant is employed as:
Correctional-Officers at USP Atwater
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☒ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

CLAIM I

1. State the constitutional or other federal civil right that was violated: 5th Amendment Right Not to be deprived of Life (Health/Safety) Due Process; 8th Amendment Right to be Free From Cruel, and Unusual Punishment inflicted.

2. Claim I. Identify the issue involved. Check only one. State additional issues in separate claims.

- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input checked="" type="checkbox"/> Threat to safety | <input checked="" type="checkbox"/> Other: <u>Threat to Health (LIFE)</u> | |

3. Supporting Facts. State as briefly as possible the FACTS supporting Claim I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

Since Dec. 21, 2020, At USP Atwater, COVID-19 outbreaks has spread throughout inmate population and Staff-members. The Plaintiff is Unable to practice (OPP) Social-distance From COVID-19 positive Staff/Inmates. The defendants that tested positive at the prison transmitted the Virus to Noninfected inmates/staff whom Contracted COVID-19, and infected others, was deliberately indifferent to the Risk of infecting, and Exposing noninfected prisoners to Contracting COVID-19 Symptoms and illnesses upon entering the prison Environment to work. And due to the defendants "Negligence", and Reckless Disregard For Plaintiff's Future Health and Safety, was the Proximate Cause of COVID-19 Pandemic Spread into USP Atwater prison population Exposing Plaintiff to the Risk of Contracting COVID-19 Virus (disease) or Death. Plaintiff Has Suffered headaches, due to inhaling toxic fumes from ventilation, Coughing/Sneezing, Pain in muscles, and throat, and difficulty of Breathing. Defendants with Knowledge Violated COH and Safety Act of 1998, Pub. L. No. 105-370, Nov. 12, 1998, 112 Stat. 3374 & 4014, and Failed to protect Plaintiff's Health and Safety. He Suffers Significant Serious Imminent Irreparable Harm present/Future due to immediate danger of COVID-19 Virus By Staff-members bring this virus into the prison, or on Federal grounds to contract inmates.

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

Mental and Emotional Distress/anguish with Pain, and Suffering, Fear of Death, and hopelessness, Psychological trauma

5. Administrative Remedies:

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☒ Yes ☐ No
- Did you submit a request for administrative relief on Claim I? ☒ Yes ☐ No
- Did you appeal your request for relief on Claim I to the highest level? ☒ Yes ☐ No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

CLAIM III

1. State the constitutional or other federal civil right that was violated: _____
2. **Claim III.** Identify the issue involved. Check **only one**. State additional issues in separate claims.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____	
3. **Supporting Facts.** State as briefly as possible the FACTS supporting Claim III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.
4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).
5. **Administrative Remedies.**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Claim III? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Claim III to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Claims, answer the questions listed above for each additional Claim on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

- (1) Compensatory-Damages From "Each" defendant in the Sum of \$200,000.00 Dollars For mental/Emotional distress/Future pain, and Suffering.
- (2) Punitive-Damages From "Each" defendant in the Sum of \$300,000.00 Dollars For breach of Statutory/Constitutional Duty to protect Plaintiffs Health, and Safety within Scope of Employment by the United States/B.O.P, and Creating an Unsafe, and unhealthy Prison Environment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on

4/4/22
DATE


SIGNATURE OF PLAINTIFF

Pro Se Litigant

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

N/A

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space you may attach more pages, but you are strongly encouraged to limit your complaint to twenty-five pages. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages. Remember, there is no need to attach exhibits to your complaint.

TRULINCS 97339071 - FLETCHER, JOHNNY JR - Unit: ATW-D-A

FROM: Health Services
TO: 97339071
SUBJECT: RE:***Inmate to Staff Message***
DATE: 02/15/2022 12:18:09 PM

Your sick call request has been accepted. You will be scheduled accordingly.

>>> ~^!"FLETCHER, ~^!JOHNNY JR" <97339071@inmatemessage.com> 2/12/2022 5:56 PM >>>
To: Medical staff
Inmate Work Assignment: N/A

I've been suffering symptoms of covid-19 I think. I been coughing, sneezing and shortness of breath. Pain in my bones and sniffing alot. Please make sure I am okay when convenient. Thank you.

United States Penitentiary
Atwater, California

(BP-9)

ADMINISTRATIVE REMEDY PROCEDURE FOR INMATES
INFORMAL RESOLUTION FORM

NOTE TO INMATE: You are advised that prior to receiving and filing a Request for Administrative Remedy Form BP-9 [BP-229 (13)], you **MUST** attempt to informally resolve your complaint through your Correctional Counselor. Briefly state ONE complaint below and list what efforts you have made to resolve your complaint informally and state the names of staff contacted. The **ORIGINAL** BP-8 must be attached should you choose to file a BP-9.

Issued By: EB (Initials of Correctional Counselor)
Date Issued to the Inmate: 2/5/22

INMATE'S COMMENTS:

1. Complaint: At U.S.P Atwater, STAFF-Members, and Inmates are infected with the COVID-19 Virus. I am at Risk of exposure and infection. These Unconstitutional Conditions of Confinement violates My 5th Amendment Right, to be kept "Safe and Healthy" required By Due process, And 8th Amendment Right, to be FREE From Cruel and Unusual punishment inflicted. I Demand \$200,000.00 From "Each" infected COVID-19 Virus STAFF-member For Negligence, of the United States/B.O.P
2. Efforts you have made to informally resolve: Spoke with Warden B. M. Trate

3. Names of staff you contacted: B. M. Trate, Warden

Date Returned to Correctional Counselor: 2/9/22

Inmate's Signature Johnny Holte

97339-071
Reg. Number

2/5/22
Date

CORRECTIONAL COUNSELOR'S COMMENTS:

Efforts made to informally resolve and staff contacted:

Attached is A Tort CLAIM (CLAIM FOR DAMAGE, INJURY, OR DEATH) SENT TO REGION UPON RECOMPLETION

Date BP-9 Issued: _____

EB
Correctional Counselor

Unit Manager (Date)

2/9/22

(B2-9)

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: MARCH 4, 2022

FROM: *for. C. H.*
ADMINISTRATIVE REMEDY COORDINATOR
WESTERN REGIONAL OFFICE

TO : JOHNNY FLETCHER JR, 97339-071
ATWATER USP UNT: 4A QTR: D43-202L
P.O. BOX 019001
ATWATER, CA 95301

FOR THE REASONS LISTED BELOW, THIS REGIONAL APPEAL
IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY
OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 1112443-R1 REGIONAL APPEAL
DATE RECEIVED : MARCH 4, 2022
SUBJECT 1 : OTHER COMPLAINT AGAINST STAFF
SUBJECT 2 :
INCIDENT RPT NO:

REJECT REASON 1: THE ISSUE YOU RAISED IS NOT SENSITIVE. HOWEVER,
WE RETAINED YOUR REQUEST/APPEAL ACCORDING TO
POLICY. YOU SHOULD FILE A REQUEST OR APPEAL AT
THE APPROPRIATE LEVEL VIA REGULAR PROCEDURES.

(Bp-10)
=

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: MARCH 4, 2022

FROM: *for C.M.*
ADMINISTRATIVE REMEDY COORDINATOR
WESTERN REGIONAL OFFICE

TO : JOHNNY FLETCHER JR, 97339-071
ATWATER USP UNT: 4A QTR: D43-202L
P.O. BOX 019001
ATWATER, CA 95301

FOR THE REASONS LISTED BELOW, THIS REGIONAL APPEAL
IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY
OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 1112388-R1 REGIONAL APPEAL
DATE RECEIVED : MARCH 2, 2022
SUBJECT 1 : OTHER COMPLAINT AGAINST STAFF
SUBJECT 2 :
INCIDENT RPT NO:

REJECT REASON 1: THE ISSUE YOU RAISED IS NOT SENSITIVE. HOWEVER,
WE RETAINED YOUR REQUEST/APPEAL ACCORDING TO
POLICY. YOU SHOULD FILE A REQUEST OR APPEAL AT
THE APPROPRIATE LEVEL VIA REGULAR PROCEDURES.

(BP-11)

REJECTION NOTICE - ADMINISTRATIVE REMEDY

DATE: MARCH 7, 2022

FROM: ADMINISTRATIVE REMEDY COORDINATOR
CENTRAL OFFICE

TO : JOHNNY FLETCHER JR, 97339-071
ATWATER USP UNT: 4A QTR: D43-202L
P.O. BOX 019001
ATWATER, CA 95301

FOR THE REASONS LISTED BELOW, THIS CENTRAL OFFICE APPEAL
~~IS BEING REJECTED AND RETURNED TO YOU. YOU SHOULD INCLUDE A COPY~~
OF THIS NOTICE WITH ANY FUTURE CORRESPONDENCE REGARDING THE REJECTION.

REMEDY ID : 1112699-A1 CENTRAL OFFICE APPEAL
DATE RECEIVED : FEBRUARY 23, 2022
SUBJECT 1 : SAFETY, SANITATION, ENVIRONMENTAL CONDITIONS
SUBJECT 2 :
INCIDENT RPT NO:

REJECT REASON 1: YOU SUBMITTED YOUR REQUEST OR APPEAL TO THE
WRONG LEVEL. YOU SHOULD HAVE FILED AT THE
INSTITUTION, REGIONAL OFFICE, OR CENTRAL
OFFICE LEVEL.

REJECT REASON 2: YOU MUST FIRST FILE A BP-9 REQUEST THROUGH THE INSTITUTION
FOR THE WARDEN'S REVIEW AND RESPONSE BEFORE FILING AN APPEAL
AT THIS LEVEL.

REJECT REASON 3: THE ISSUE YOU RAISED IS NOT SENSITIVE. HOWEVER,
WE RETAINED YOUR REQUEST/APPEAL ACCORDING TO
POLICY. YOU SHOULD FILE A REQUEST OR APPEAL AT
THE APPROPRIATE LEVEL VIA REGULAR PROCEDURES.